JURY TAKES BUT FEW MINUTES IN RETURNING MARSHALL VERDICT

(Continued from page one)

demic sense; in the main it was argument pure and simple, delivered by a past-master of speech who never was at a loss for words, absolutely devoid of self-consciousness, seductively winning in a masterful style that gradually enveloped his hearers with its potency. There was good reason for this, it is now known. That Mr. McKean's reputation in Pennsylvania as a high-class criminal lawyer has basis is shown by the statement made by Attorney Frank E. Thompson, his colleague, yesterday, that McKean has handled 26 criminal cases wherein the accused were liable to received the death penalty.

A well-known jurist, at the close of Attorney McKean's effort was heard to remark:

"Gentlemen, that is the first really prepared address that has been made to a jury in the local courts in many years."

It was the first and only word Attorney McKean spoke throughout the trial. During the taking of the evidence, the selection of the jurors and the wordy arguments between counsel he remained virtually a spectator—though a busy one. He was unceasingly busy, scribbing notes in a huge tablet, and thus was two weeks in preparing the master stroke which he delivered yesterday.

He was not lacking in ready speech either. At one time he was sharply corrected by his colleague, Attorney Thompson, on a minor point. In pointing out the disparity in size between Marshall and Guertler, showing that the former stood only 5 feet 8 inches in height while his adversary measures 6 feet 2 inches, McKean recalled the difference as "six feet."

"Six feet!" shouted Thompson laughingly.

"Well," retorted McKean drolly, "I'm not like the fellow who said a certain horse was sixteen feet high when he meant it was sixteen hands high. When some one called his attention to his mistake the fellow said: "'Did I say that? Well, if I said I'll stick to it.'"

In rebuttal Attorney Carthcart spoke briefly holding the jury not more than a half hour. He reminded them that the defense had glided carefully over the point that Marshall, with the opportunity to escape and seeing Guertler and Dick bearing down upon him, did not take advantage of the chance to avoid trouble, but stood his ground, uttering no word of warning and finally shooting, causing a death which he might have avoided up to the very moment that he fired.

Court Charges Jury.

Among the interesting points brought out in the charge of the judge to the jury are the following:

For the prosecution, refused.

The court further instructs you that, in order to justify the defendant in taking the life of Charles Robert Guertler in self-defense, he must have employed all the means in his power consistent with his safety to have averted his danger and avoided the necessity of the killing; and if you find that the defendant could, by retreating, have averted the danger and avoided the necessity of the killing, it was his duty to do so. (Bishop vs. State, 73 Ark., 568; 2 Brickwood-Sackett instructions, section 3119).

As a matter of law, no one has a right to kill another, even in self-defense, unless such killing is apparently necessary for such defense. Before a person can justify taking the life of a human being on the ground of self-defense, he must, when attacked, employ all reasonable means within his power, consistent with his safety, to avoid the danger and avert the necessity for the killing. (Smith vs. Territory, 11 Okla., 669; 2 Brickwood-Sackett instructions, section 3119).

Before a person can take the life of an assailant, he must be in a position where he can not retreat without increasing danger to his life, or subjecting himself to great bodily harm. And if he can retreat without so increasing his danger to life, or great bodily harm, he can not successfully invoke the doctrine of self-defense. (Washington vs. State, 125 Ala., 40; 2 Brickwood-Sackett instructions, section 3162.

Accordingly, if, in this case, you believe that the defendant could have averted the necessity of shooting Charles Robert Guertler, by retreating without increasing the danger to his life, or increasing the danger of great bodily harm, then it was his duty to so retreat, and he can not successfully claim that he acted in self-defense.

For the defense, allowed,

The defendant in this case, gentlemen of the jury, claims that he acted in self-defense. I instruct you that the right of self-defense is derived from nature and that to repel force by force is the common instinct of every creature that has means of defense. Sudden and strong resistence to unrighteous attack is not merely a thing to be tolerated—in many cases it is a moral duty. Municipal law has left to individuals the exercise of this natural right of self-defense in all cases in which the law is either too slow or too feeble to stay the hand of violence and it is to be considered that a man repelling imminent danger cannot be expected to use as much care as if he had time to act deliberately.

Norris vs. Whyte, 158 Mo. 20, 57 S. W. 1037.

If you believe from the evidence, gentlemen of the jury, that at the time of the shooting the defendant, John William Marshall, had reasonable cause to apprehend and did apprehend a design on the part of Charles Robert Guertler to take his life, or to do him some great personal injury, and that there was reasonable cause for him to apprehend, and he did apprehend immediate danger of such design being accomplished, and that he shot to avert such apprehended danger and that at the time of the shooting he had reasonable cause to believe and did believe that it was necessary for him to do so to protect himself from such apprehended danger, then he had a right to do such shooting; and you should acquit him on the ground of self-defense. It is not necessary that the defendant should have been in actual or real danger, nor that the danger, if any, should have been impending and about to fall. If he had reasonable cause to believe and did believe he was in immediate danger of being killed or receiving some great personal injury, he had a right to act upon such belief, and whether or not he did so believe is for you to determine from all the facts and circumstances appearing in evidence.

State vs. Todd, 194 Mo. 377, 92 S. W. 674.

It is not necessary, gentlemen of the jury, to the right of self-defense, that the danger should in fact, exist. It may be only apparent and not real. If it reasonably appears from the circumstances of the case that the danger existed, the person threatened with such apparent danger has the same right to defend against it and to the same extent that he would have were the danger real. And in determining whether there was reason to believe that danger did exist, the appearances must be viewed from the standpoint of the person who acted upon them and from no other standpoint.

Swanner vs. State, 53 S. W. 72, 74.

A man, gentlemen of the jury, need not be in actual imminent peril of his life or limb before he may slay his assailant. It is sufficient if, from the circumstances as they present themselves to him at the time of the assault, he has reasonable ground to believe that it is necessary for him to fire the fatal shot, strike the fatal blow, or perform such other act causing the death of his assailant in order to avoid death or great bodily harm to himself, although it may afterwards appear and be shown that he was in no danger of life or limb at the time he slays his assailant, and in determining whether or not the defendant, in this case, had reasonable ground to believe he was in actual or apparent danger of his life or great bodily harm at the time he fired the shot that took the life of the deceased, the jury should put themselves in his place and make up their minds from the standpoint of the defendant at the time he fired the shot and not from the standpoint of the jury in the light of the facts proved.

And I further instruct you, gentlemen of the jury, that although you may believe from the evidence that the defendant made the first attack upon the deceased, still, if you further believe from the evidence that the defendant afterwards and before the fatal shot was fired ceased to fight, and in good faith withdrew from the conflict by retreating or otherwise, then the right of the deceased to employ force against the defendant ceased, and if the deceased subsequently used, or attempted to use violence towards the defendant, then the defendant's right to defend himself revived, and if the defendant then found himself in apparent danger of losing his life, or of sustaining great bodily injury at the hands of the deceased, he had the same right to defend himself that he would have had if he had not originally commenced the conflict.

Brickwood Sackett Instructions, Sec. 3134, "C."

Under the law, gentlemen of the jury, the defendant in this case is presumed to be innocent of the crime charged against him and so strong is this presumption of innocence that it clings to him, surrounds, shields and protects him throughout the entire trial of this case and until such presumption is overcome by evidence which proves him guilty beyond a reasonable doubt; and if the testimony in this case in its weight and effect be such as two conclusions can be reasonably drawn from it, the one favoring the defendant's innocence and the other tending to establish his guilt, justice and humanity alike demand that the jury shall adopt the former and find the defendant not guilty.

State vs. Privett, 175 Mo. 207, 75 S. W. 457.

Bryant vs. State, 116 Ala. 445, 23 So. 40.

Needless to say, Marshall, his father and his sister, as well as his four attorneys, were highly elated when the verdict was announced. His father was the first to shake his hand, and immediately afterwards his pretty young sister rusher up and embraced him. Attorney McKean and Attorneys F. E. Thompson, F. W. Milverton and A. L. C. Atkinson, his counsel, in turn grasped his hand in hearty congratulation. Marshall at once proceeded to the Alexander Young Hotel, where he engaged apartments and where he probably will stop until he leaves for the East with his father and sister.

The jury which acquitted him consisted of Edward A. Jacobson, foreman; Frank C. Bailey, Willard H. Grace, Frank A. Batchelor, Rodney K. Burgess, Gladstone S. Leithead, Theodore A. Cooke, Walter C. Love, Rudolph von S. Domkowicz, Reynold B. McGrew, Charles Freeman and John Nunes.

"It's going to be war to the knife," declared the suburban man, who was feeding his chickens. "What now?" asked the friend. "Why, Blinks sent me a box of axle grease and advised me to use it on my lawn mower." Well?" "Well, I sent it back and told him to use it on his daughter's voice." —Lippincott's.

POPULAR CONCERT ON ROOF GARDEN SATURDAY NIGHT

The usual popular concert will be given tomorrow (Saturday) evening, commencing at 9 o'clock on the Roof Garden of the Alexander Young hotel by Professor Miltner's Orchestra. The public is cordially invited. — advertisement.

WANT-ADS

The Star-Bulletin's Classified

BOOKKEEPER.

Experienced bookkeeper wishes position, opening, closing, auditing and keeping books, from 1 hour per week to 5 hours a day. Box. 33, this office 5810-6t.

WEATHER TODAY

Friday, March 27.

Temperature — 6 a.m., 69; 8 a.m., 72; 10 a. m., 74; 12 noon, 74. Minimum last night, 68.

Wind—6 a.m., direction S. E.; velocity 1; 8 a. m., direction E., velocity 3; 10 a.m., direction S.E., velocity 4; 12 noon, direction S. E., velocity 12. Movement past 24 hours, 117 miles.

Barometer at 8 a. m., 29.96. Relative humidity, 8 a.m., 76. Dew-point at 8 a. m., 65. Absolute humidity, 8 a. m., 6.466. Rainfall, .17.